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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/783,889

02/20/2004

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10,193

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03/16/2012

EXAMINER

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ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

03/16/2012

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROGER P. JACKSON

Appeal 2011-001384
Application 10/783,889
Technology Center 3700

Before TONI R. SCHEINER, DONALD E. ADAMS, and
STEPHEN WALSH, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON APPEAL¹

This appeal under 35 U.S.C. § 134 involves claims 21-23 (App. Br. 3). We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

The claims are directed to a closure for setting engagement with a structural member. Claim 21 is representative and is reproduced in the “CLAIMS APPENDIX” of Appellant’s Brief (App. Br. 26-27).

¹ This Appeal is related to Appeal No. 2010-0011356, Application No. 10/784,006.

Claims 21-23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schäfer.²

Claims 21-23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Morrison.³

We affirm.

The rejection over Schäfer:

ISSUE

Does the preponderance of evidence on this record support Examiner's finding that Schäfer teaches the claimed invention?

FACTUAL FINDINGS (FF)

FF 1. Examiner finds that Schäfer teaches a device as set forth in Appellant's claim 21, including a substantially continuous guide and advancement flange extending helically around the outside of a cylindrical surface (Ans. 4-5).

FF 2. Examiner finds that "[t]he translation provided by Appellant in the reply filed 05 November 2007 . . . teaches not only that the device has threads but that the anti-splay grub screw is screwed in" (Ans. 6; *see also id.*, citing, Schäfer Translation (PTO 10-3621) 7: 6-14).

FF 3. Examiner finds that Schäfer suggests that the closure is a setscrew that forms a friction lock with the undercut and lug of the tread of the head (Ans. 8).

² Schäfer, DE 298 10 798 U1, published February 12, 1999, as translated in PTO 10-3621 (May 2010).

³ Morrison et al., US 6,296,642 B1, issued October 2, 2001.

FF 4. Schäfer ‘749⁴ distinguishes between a “bayonet joint” that is “closed merely in one rotational direction” and a “set screw” that “is screwed into [a] . . . threaded bore” (Schäfer ‘749, col. 3, ll. 17-20).

ANALYSIS

The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Claim 21 is representative.

While Appellant recognizes that Schäfer speaks in terms of a device that is “screwed in,” Appellant contends that with respect to Schäfer’s first embodiment, “the term screw can mean simple rotation into something” (App. Br. 17; *see also* Reply Br. 2). In this regard, Appellant contends that Schäfer’s use of the term “screwed in” refers to “a push down and twist structure” (*id.*). Appellant contends that their “interpretation is supported by the Schäfer specification and is consistent with other [unidentified] devices that Schäfer patented and produced” (*id.*). In addition, Appellant contends that “a structure that mates upon rotation 90° can be called a grub screw and rotation or twisting can be interpreted and translated from the German into English as being ‘screwed in’” (App. Br. 21-22; *see also* Reply Br. 2-4). We are not persuaded (FF 1-2; Ans. 6-7). *In re Geisler*, 116 F.3d 1465, 1471 (Fed. Cir. 1997) (argument by counsel cannot take the place of evidence).

Appellant contends that Schäfer’s second embodiment “neither shows or teaches a closure” (App. Br. 18; Reply Br. 4-5). We are not persuaded (FF 3). In addition, Appellant contends that Schäfer’s figure 2 does not illustrate a pitch to the tiers of the treads, and therefore “it is impossible for such tiers to be helically wound” (App. Br. 19; *see also* 20-22; Reply Br. 4-5). We are not persuaded. As Examiner explains, “given the very small

⁴ Schäfer et al., US 6,540,749 B2, issued April 1, 2003.

portion of the entire circumference of the threads” illustrated in Schäfer’s figure 2, a conclusion cannot be drawn as to the pitch of the threads. Instead, one must consider Schäfer’s disclosure and “Appellant’s argument runs counter to the express teaching of” Schäfer (Ans. 7; *see* FF 2).

Appellant directs attention to Schäfer ‘749 to support the contention that Schäfer’s device is limited to a push down and twist structure (App. Br. 22-24). We are not persuaded for the reasons provided by Examiner (Ans. 8-9; FF 4).

CONCLUSION OF LAW

The preponderance of evidence on this record supports Examiner’s finding that Schäfer teaches the claimed invention. The rejection of claim 21 under 35 U.S.C. § 102(b) as being anticipated by Schäfer is affirmed. Because they are not separately argued claims 22 and 23 fall together with claim 21. 37 C.F.R. § 41.37(c)(1)(vii).

The rejection over Morrison:

ISSUE

Does the preponderance of evidence on this record support Examiner’s finding that Morrison teaches the claimed invention?

FACTUAL FINDINGS (FF)

FF 5. Examiner finds that Morrison teaches a device as set forth in Appellant’s claim 21, including a substantially continuous flange helically around the outside of a cylindrical surface “having reverse angle threads facing the closure axis of the device” (Ans. 5-6).

FF 6. Examiner finds that “the very purpose of the reverse angle thread is to radially interlock with the arms and prevent outward splaying of the arms

upon tightening of the closure” (Ans. 9; *see also* Ans. 10 (“it is because of the relatively enlarged portion of the reverse-angle thread above horizontal (vis-à-vis a traditional thread design) that a radially interlocking relationship between the closure and legs is created”)).

ANALYSIS

The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Claim 21 is representative.

Appellant contends that “[w]hile Morrison, et al. teaches a closure with a helically wound thread, it is a simple V-thread of the reverse angle type” (App. Br. 24). Accordingly, “for the same reasons as were discussed with respect to Schafer [sic], it is urged that Morrison, et al. does not anticipate applicant’s claimed structure” (*id.* at 25). For the reasons set forth above, we are not persuaded by Appellant’s contentions regarding Schäfer. Further, Appellant failed to provide persuasive reasoning or evidence to support finding that Morrison fails to teach the invention of Appellant’s claim 21.

We are also not persuaded by Appellant’s contention that “[n]othing in Morrison, et al., in any way shows, suggests or teaches providing a closure that has structure which radially interlocks with the receiver arms” (App. Br. 24-25). In this regard, Appellant contends that “it is not possible for Morrison, et al., to anticipate Claim[] 21 . . . because it has smooth and radially linear thread surfaces which cannot interlock with a mating surface of the receiver, since those surfaces are also smooth and radially linear” (Reply Br. 5). We are not persuaded (FF 6). Appellant fails to provide persuasive reasoning or evidence to support finding that Examiner’s

rationale relating to Morrison's radially interlocking structure is incorrect.
In re Geisler, 116 F.3d at 1471.

CONCLUSION OF LAW

The preponderance of evidence on this record supports Examiner's finding that Morrison teaches the claimed invention. The rejection of claim 21 under 35 U.S.C. § 102(b) as being anticipated by Morrison is affirmed. Because they are not separately argued claims 22 and 23 fall together with claim 21. 37 C.F.R. § 41.37(c)(1)(vii).

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

cdc